SINGLE BENCH

C.D. 1001

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IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR

WRIT PETITION NO. 648 /2006

PETITIONER

Gautam Bhuddha Agrawal,
S/o – Shri Ramkrishna Agrawal,
Aged about – 54 years,
R/o – Village – Kumhari, Tehsil & District - Durg, (C.G.).

P.R. No. 636/06
Presented by Manoj Jaiswal
dated 6/12/06

Vs.

RESPONDENTS

1. State of Chhattisgarh,
Through: Secretary,
Department of Urban & Rural Development, Mantralya, D.K.S. Bhawan, Raipur, (C.G.).

RECEIVED-COPY
D. Rokela 6/12/06
CLERK to A. G. BILASPUR

2. The Director General,
Town & Country Planning,
R.D.A. Building, Near Shahstri Chowk, Raipur, (C.G.).

3. The Deputy Director,
Town & Country Planning,
Regional Office, Durg, (C.G.)

4. The Chief Municipal Officer,
Municipal Council, Kumhari,
District – Durg, (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT(S) OR ORDER(S) OR DIRECTION(S)

The petitioners named above most respectfully beg to submit as under:

AF,R

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 648/2006 **सन् 200**

(63)

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	9-1-2007 Shri Y.C. Sharma, counsel for the petitioner. Shri A.S. Kachhawaha, Govt. Advocate for the State/respondents No.1 to 3. Shri Yashwant Singh Thakur, counsel for respondent No.4. Heard. By order/letter dated 3-10-2005 issued by respondent No.2 and pursuant to it the order/letter dated 11-11-2005 issued by respondent No.3, to change the purpose of use of land bearing khasra No.1412/2 area of 0.304 hectare (for brevity "the land in dispute") has been refused. Feeling aggrieved, this petition under Article 226/227 of the Constitution of India. Petitioner claiming himself owner of the land in dispute situated at village Kumhari, in order to construct a motel over it applied for sanction of map to Municipal Council, Kumahari, who asked the petitioner to submit Land Use Certificate in respect of his land. In the year 1986, the officials of respondent No.3 had surveyed the land and on 19-7-1991 Master Plan of Bhilai City was published regarding the use of land called as Bhilai Durg Development Plan and under that plan the land in dispute has been kept reserved for plantation, but after lapse of a long period the State did not take any steps to acquire the land for that purpose, therefore, petitioner applied for issuance of Land Use Certificate in his favour before the Town and Country Planning, but his prayer has been refused. Respondents No.1 to 3 have opposed the petition and in their return emphasis has been placed on Section 23-A of the M.P./C.G. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for brevity "the Adhiniyam, 1973") wherein provision for modification of development plan has been prescribed and	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

pleaded that petitioner was required to submit his application before the State Government, who alone is competent to modify the plans. Respondent No.4 did not file any detailed return, but only raised certain preliminary objections.

Admittedly there is no dispute regarding ownership of the land. It is also not disputed that the land bearing khasra No.1412/2 area of 0.304 hectare of land situated at village Kumhari, has been reserved for plantation under the Master Plan of Bhilai City known and published as Bhilai Durg Development Plan. Admittedly, the petitioner did not file application in accordance with Section 23-A of the Adhiniyam, 1973 before the State Government and in absence of modification of the plan neither permission to construct a motel can be granted by Municipality nor petitioner can utilize the land otherwise than by plantation.

Hon'ble Apex Court in the matter of **Raju S. Jethmalani and others vs. State of Maharashtra and others (2005 Indiaw SC 352)** has considered such issues and held thus :

> "Whether Government can prepare a development plan and deprive owner of land from using that land?; whether without acquiring land can Government deprive a person of his use of land? – Held, there is no prohibition for preparing development plan comprising of private land but that plan cannot be implemented unless private land is acquired by Government for development purpose."

In the aforesaid case, the Hon'ble Apex Court further observed that :

> "The Government cannot deprive the persons from using their private property. We quite appreciate the interest of the residents of that area for the benefit of the ecology, certain

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

areas should be earmarked for garden and park so as to provide fresh air to the residents of that locality. In order to provide such amenities to the residents of the area private land can be acquired in order to effectuate their public purpose but without acquiring the private land the Government cannot deprive the owner of the land from using that land for residential purpose."

It is as clear as crystal that without acquiring the private land, Government cannot deprive a person/owner of the land of his use of the land.

Here in the instant case the same is the situation though land belong to the private party and Master Plan has been published in 1991 yet after lapse of a long period, the private property has not been taken by the Government in accordance with law and now when a private party is inclined to use it, he is denied of his rights in the garb of that Master Plan.

Having considered all the facts and circumstances of the case, it is directed that petitioner shall file an application before the State Government within a period of 15 days, in accordance with Section 23-A of the Adhiniyam, 1973 and thereafter the State Government shall decide the same in accordance with law, within a period of three months from the date of receipt of the same and in case modification of use of land is allowed, petitioner may apply for necessary permission before the Municipality in accordance with Municipality law, rules and regulations, who may consider his application and pass suitable orders. In case the State do not wish to modify the plan, State may proceed in accordance with law to acquire the land for the purposes enshrined in the plan within a period of six months from the date of order passed under Section 23-A of the Adhiniyam, 1973.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Gowri	With the aforesaid observations and directions, the petition stands disposed of. However, if exigency arises, the petitioner may invoke the jurisdiction of this Court as enshrined under Article 226 of the Constitution of India. Certified copy as per rules.	Sd/- V.K. Shrivastava Judge

(पीछे देखिये)

15/01/07